TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014

ON THE FOLLOWING MEASURE:
S.B. NO. 2249, S.D. 1, H.D. 1, RELATING TO PUBLIC AGENCY MEETINGS.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 27, 2014 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Margaret S. Ahn, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill allows proposed administrative rules to be described in public meeting agendas under section 92-7, Hawaii Revised Statutes (HRS), in the same manner as in public hearing notices under section 91-3, HRS.

When agencies are going to consider proposed administrative rules at their public meetings (which are separate from the public hearings required under section 91-3, HRS, for the actual adoption of the rules), their meeting agendas must describe each section of each rule. Many agencies going through the rule adoption or amendment process will adopt or amend several sections, or entire chapters, at the same time. To ward off a challenge that their agendas do not describe each rule section with sufficient detail, some agencies have resorted to attaching the entire text of their rules to their agendas, resulting in agendas that are hundreds of pages. This creates a burden on public agencies and frustrates the purpose of a meeting agenda to provide the public with an easy-to-understand notice of what is going to be considered at the public meeting.

We respectfully ask the Committee to pass this bill.

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Written Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON FINANCE

Thursday, March 27, 2014
2:00 p.m.
State Capitol, Conference Room 308
in consideration of

SB 2249, SD1, HD1
RELATING TO PUBLIC AGENCY MEETINGS.

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) **supports** SB 2249, SD1, HD1, which allows proposed adoption, amendment or repeal of administrative rules to be described in meeting agendas in the same manner as in public hearing notices.

The changes will greatly assist in the agenda process of the Small Business Regulatory Review Board (SBRRB), an attached agency of DBEDT that is statutorily required to review proposed amended and new administrative rules impacting small business. This process will significantly reduce the length of time and volume of the SBRRB's agendas by removing the need to incorporate the entire rule in the agenda, which may entail hundreds of pages.

Overall, while this process will not take away the ability for the public and businesses to be properly noticed, it will save the SBRRB a significant amount of time and effort, and also help to deter frivolous claims based solely on an agenda's rule description.

Thank you for the opportunity to offer testimony in support of this measure.

LATE

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 18, 2014
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 2249, S.D. 1
Relating to Public Agency Meetings.

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") **supports** S.B. 2249, S.D. 1, which would clarify how proposed adoption, amendment, or repeal of administrative rules may be described to satisfy the Sunshine Law's public notice requirement, section 92-7, HRS. **OIP respectfully requests that the effective date be changed to July 1, 2014,** rather than July 1, 2050.

Chapter 91, HRS, sets requirements for an agency to give public notice of proposed administrative rules, or proposed amendments to administrative rules, specifically in sections 91-3 and 91-2.6. However, when the agency in question is a board subject to the Sunshine Law and wants to discuss the proposed rules, it is also subject to the Sunshine Law's general notice standard for public meeting agendas, which assumes that agenda itself must provide all the necessary public notice because those reading it will not necessarily have access to additional information in extrinsic documents. In the case of rules, that means that a Sunshine Law agenda must list each rule being created or amended and, briefly, what the effect will be; this requirement is a particular challenge for agencies like

the Small Business Regulatory Review Board, which is not responsible for creating the rules and may not be familiar with all aspects of the rules' content, but is required to review certain aspects of the proposal as part of the administrative rule-making process. Section 91-3 of the rule-making procedures, by contrast, assumes that the public will get detailed information about proposed rules by reading the rules themselves, so the required notice focuses on providing information on how the public can get a copy of the proposed rules, with only a general description of the topic the proposed rules will address.

Because of the difference between the Sunshine Law and rule-making statutes, boards proposing administrative rules have found themselves obligated to go to extra effort to meet two fundamentally different notice requirements, even though the chapter 91 requirements are considered adequate when an agency that is not a Sunshine Law board goes through rulemaking. Further, when a Sunshine Law board needs to review proposed rules from another agency, it cannot rely on the description already written up by the rulemaking agency to meet the requirements of chapter 91, but instead must become familiar enough with rules it did not create to write a description that notes each section being affected, and how.

The existence of this dual standard has also created an inconsistency in the public's ability to challenge the rulemaking process, as people opposed to an ongoing rulemaking can challenge the adequacy of a Sunshine Law board's meeting notice to OIP or to court as a backdoor way to challenge the underlying rulemaking, but cannot do the same with other agencies' rules.

OIP does not believe that this inconsistency in the notice requirements for Sunshine Law boards' rulemaking and other agencies' rulemaking serves a sound policy purpose. Sections 91-2.6 and 91-3, HRS, ensure that members of the public can readily go to the source, *i.e.,* the rules themselves, for detailed

information on what topics the proposed rules address and how any amendments would change existing rules. If the more detailed summary of proposed rules currently required for a Sunshine Law agenda is also needed to ensure adequate public notice, then it should be a chapter 91 requirement for all agencies doing rulemaking, and not just those that happen to be Sunshine Law boards. Likewise, if a process for members of the public to challenge an agency's rulemaking is needed, then it should be in chapter 91 and applicable to all agencies, not just those that happen to be Sunshine Law boards.

For these reasons, OIP supports this bill, which would conform the notice requirements for a Sunshine Law board's consideration of administrative rules to the existing notice requirements for administrative rules in section 91-2.6 and -3, HRS, and requests that its effective date be changed to July 1, 2014.

Thank you for the opportunity to testify.